

## Assembly Bill No. 1895

### CHAPTER 485

An act to amend Sections 158, 202, 301.5, 305, 306, 503, 602, 603, 5220, 5512, 7220, 7512, 9220, 9412, 12360, 12462, 25014.7, 25100, 25101, and 25117 of, and to add Section 163.1 to, the Corporations Code, and to amend Section 11521.2 of the Insurance Code, relating to corporations.

[Approved by Governor September 16, 2000. Filed  
with Secretary of State September 19, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1895, Ackerman. Corporations.

Existing law sets forth organizational procedures and filing requirements for corporations. Existing law also regulates the ownership and sale of, and investment in, securities registered on a national securities exchange, as provided by federal law.

This bill would make various changes relating to corporations and securities, including the following:

(1) Adds a definition of "cumulative dividends in arrears" for shareholder distributions.

(2) Revises the provision regarding professional corporations.

(3) Changes a reference to securities listed on the National Market System of the Nasdaq Stock Market in various provisions of law.

(4) Specifies the conditions regarding election of a director to fill a vacancy not created by removal of a director.

(5) Authorizes a superior court to appoint directors of various types of nonprofit corporations if the corporation has no shareholders or initial directors have not been named and all of the directors die, resign, or become incompetent.

(6) Specifies the conditions of a board's approval of business items if members leave before a vote.

*The people of the State of California do enact as follows:*

SECTION 1. Section 158 of the Corporations Code is amended to read:

158. (a) "Close corporation" means a corporation whose articles contain, in addition to the provisions required by Section 202, a provision that all of the corporation's issued shares of all classes shall be held of record by not more than a specified number of persons, not exceeding 35, and a statement "This corporation is a close corporation."

(b) The special provisions referred to in subdivision (a) may be included in the articles by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of all of the issued and outstanding shares of all classes.

(c) The special provisions referred to in subdivision (a) may be deleted from the articles by amendment, or the number of shareholders specified may be changed by amendment, but if such amendment is adopted after the issuance of shares only by the affirmative vote of at least two-thirds of each class of the outstanding shares; provided, however, that the articles may provide for a lesser vote, but not less than a majority of the outstanding shares, or may deny a vote to any class, or both.

(d) In determining the number of shareholders for the purposes of the provision in the articles authorized by this section, a husband and wife and the personal representative of either shall be counted as one regardless of how shares may be held by either or both of them, a trust or personal representative of a decedent holding shares shall be counted as one regardless of the number of trustees or beneficiaries and a partnership or corporation or business association holding shares shall be counted as one (except that any such trust or entity the primary purpose of which was the acquisition or voting of the shares shall be counted according to the number of beneficial interests therein).

(e) A corporation shall cease to be a close corporation upon the filing of an amendment to its articles pursuant to subdivision (c) or if it shall have more than the maximum number of holders of record of its shares specified in its articles as a result of an inter vivos transfer of shares which is not void under subdivision (d) of Section 418, the transfer of shares on distribution by will or pursuant to the laws of descent and distribution, the dissolution of a partnership or corporation or business association or the termination of a trust which holds shares, by court decree upon dissolution of a marriage or otherwise by operation of law. Promptly upon acquiring more than the specified number of holders of record of its shares, a close corporation shall execute and file an amendment to its articles deleting the special provisions referred to in subdivision (a) and deleting any other provisions not permissible for a corporation which is not a close corporation, which amendment shall be promptly approved and filed by the board and need not be approved by the outstanding shares.

(f) Nothing contained in this section shall invalidate any agreement among the shareholders to vote for the deletion from the articles of the special provisions referred to in subdivision (a) upon the lapse of a specified period of time or upon the occurrence of a certain event or condition or otherwise.

(g) The following sections contain specific references to close corporations: 186, 202, 204, 300, 418, 421, 1111, 1201, 1800 and 1904.



SEC. 2. Section 163.1 is added to the Corporations Code, to read:

163.1. For purposes of Section 503, “cumulative dividends in arrears” means only cumulative dividends that have not been paid as required on a scheduled payment date set forth in, or determined pursuant to, the articles of incorporation, regardless of whether those dividends had been declared prior to that scheduled payment date.

SEC. 3. Section 202 of the Corporations Code is amended to read:

202. The articles of incorporation shall set forth:

(a) The name of the corporation; provided, however, that in order for the corporation to be subject to the provisions of this division applicable to a close corporation (Section 158), the name of the corporation must contain the word “corporation”, “incorporated” or “limited” or an abbreviation of one of such words.

(b) (1) The applicable one of the following statements:

(i) The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code; or

(ii) The purpose of the corporation is to engage in the profession of \_\_\_\_\_ (with the insertion of a profession permitted to be incorporated by the California Corporations Code) and any other lawful activities (other than the banking or trust company business) not prohibited to a corporation engaging in such profession by applicable laws and regulations.

(2) In case the corporation is a corporation subject to the Banking Law, the articles shall set forth a statement of purpose which is prescribed in the applicable provision of the Banking Law.

(3) In case the corporation is a corporation subject to the Insurance Code as an insurer, the articles shall additionally state that the business of the corporation is to be an insurer.

(4) If the corporation is intended to be a “professional corporation” within the meaning of the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3), the articles shall additionally contain the statement required by Section 13404.

The articles shall not set forth any further or additional statement with respect to the purposes or powers of the corporation, except by way of limitation or except as expressly required by any law of this state other than this division or any federal or other statute or regulation (including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes).

(c) The name and address in this state of the corporation’s initial agent for service of process in accordance with subdivision (b) of Section 1502.



(d) If the corporation is authorized to issue only one class of shares, the total number of shares which the corporation is authorized to issue.

(e) If the corporation is authorized to issue more than one class of shares, or if any class of shares is to have two or more series:

(1) The total number of shares of each class the corporation is authorized to issue, and the total number of shares of each series which the corporation is authorized to issue or that the board is authorized to fix the number of shares of any such series;

(2) The designation of each class, and the designation of each series or that the board may determine the designation of any such series; and

(3) The rights, preferences, privileges and restrictions granted to or imposed upon the respective classes or series of shares or the holders thereof, or that the board, within any limits and restrictions stated, may determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class of shares. As to any series the number of shares of which is authorized to be fixed by the board, the articles may also authorize the board, within the limits and restrictions stated therein or stated in any resolution or resolutions of the board originally fixing the number of shares constituting any series, to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any such series subsequent to the issue of shares of that series. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

SEC. 4. Section 301.5 of the Corporations Code is amended to read:

301.5. (a) A listed corporation may, by amendment of its articles or bylaws, adopt provisions to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. After the issuance of shares, a corporation which is not a listed corporation may, by amendment of its articles or bylaws, adopt provisions to be effective when the corporation becomes a listed corporation to divide the board of directors into two or three classes to serve for terms of two or three years respectively, or to eliminate cumulative voting, or both. An article or bylaw amendment providing for division of the board of directors into classes, or any change in the number of classes, or the elimination of cumulative voting may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903.

(b) If the board of directors is divided into two classes pursuant to subdivision (a), the authorized number of directors shall be no less



than six and one-half of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. If the board of directors is divided into three classes, the authorized number of directors shall be no less than nine and one-third of the directors or as close an approximation as possible shall be elected at each annual meeting of shareholders. Directors of a listed corporation may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in subdivision (a) is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(c) If directors for more than one class are to be elected by the shareholders at any one meeting of shareholders and the election is by cumulative voting pursuant to Section 708, votes may be cumulated only for directors to be elected within each class.

(d) For purposes of this section, a “listed corporation” means any of the following:

(1) A corporation with outstanding shares listed on the New York Stock Exchange or the American Stock Exchange.

(2) A corporation with outstanding securities listed on the National Market System of the Nasdaq Stock Market (or any successor to that entity).

(e) Subject to subdivision (h), if a listed corporation having a board of directors divided into classes pursuant to subdivision (a) ceases to be a listed corporation for any reason, unless the articles of incorporation or bylaws of the corporation provide for the elimination of classes of directors at an earlier date or dates, the board of directors of the corporation shall cease to be divided into classes as to each class of directors on the date of the expiration of the term of the directors in that class and the term of each director serving at the time the corporation ceases to be a listed corporation (and the term of each director elected to fill a vacancy resulting from the death, resignation, or removal of any of those directors) shall continue until its expiration as if the corporation had not ceased to be a listed corporation.

(f) Subject to subdivision (h), if a listed corporation having a provision in its articles or bylaws eliminating cumulative voting pursuant to subdivision (a) or permitting noncumulative voting in the election of directors pursuant to that subdivision, or both, ceases to be a listed corporation for any reason, the shareholders shall be entitled to cumulate their votes pursuant to Section 708 at any election of directors occurring while the corporation is not a listed corporation notwithstanding that provision in its articles of incorporation or bylaws.

(g) Subject to subdivision (i), if a corporation that is not a listed corporation adopts amendments to its articles of incorporation or



bylaws to divide its board of directors into classes or to eliminate cumulative voting, or both, pursuant to subdivision (a) and then becomes a listed corporation, unless the articles of incorporation or bylaws provide for those provisions to become effective at some other time and, in cases where classes of directors are provided for, identify the directors who, or the directorships that, are to be in each class or the method by which those directors or directorships are to be identified, the provisions shall become effective for the next election of directors after the corporation becomes a listed corporation at which all directors are to be elected.

(h) If a corporation ceases to be a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivisions (e) and (f), the corporation shall not be deemed to have ceased to be a listed corporation until the conclusion of the meeting of shareholders.

(i) If a corporation becomes a listed corporation on or after the record date for a meeting of shareholders and prior to the conclusion of the meeting, including the conclusion of the meeting after an adjournment or postponement that does not require or result in the setting of a new record date, then, solely for purposes of subdivision (g), the corporation shall not be deemed to have become a listed corporation until the conclusion of the meeting of shareholders.

(j) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (d). If an article or bylaw amendment referred to in subdivision (a) is adopted by a corporation which is not a listed corporation, the provision, as adopted, shall include the following statement or the substantial equivalent: “This provision shall become effective only when the corporation becomes a listed corporation within the meaning of Section 301.5 of the Corporations Code.”

SEC. 5. Section 305 of the Corporations Code is amended to read:

305. (a) Unless otherwise provided in the articles or bylaws and except for a vacancy created by the removal of a director, vacancies on the board may be filled by approval of the board (Section 151) or, if the number of directors then in office is less than a quorum, by (1) the unanimous written consent of the directors then in office, (2) the affirmative vote of a majority of the directors then in office at a meeting held pursuant to notice or waivers of notice complying with Section 307 or (3) a sole remaining director. Unless the articles or a bylaw adopted by the shareholders provide that the board may fill vacancies occurring in the board by reason of the removal of



directors, such vacancies may be filled only by approval of the shareholders (Section 153).

(b) The shareholders may elect a director at any time to fill any vacancy not filled by the directors. Any such election by written consent other than to fill a vacancy created by removal, which requires the unanimous consent of all shares entitled to vote for the election of directors, requires the consent of a majority of the outstanding shares entitled to vote.

(c) If, after the filling of any vacancy by the directors, the directors then in office who have been elected by the shareholders shall constitute less than a majority of the directors then in office, then both of the following shall be applicable:

(1) Any holder or holders of an aggregate of 5 percent or more of the total number of shares at the time outstanding having the right to vote for those directors may call a special meeting of shareholders, or

(2) The superior court of the proper county shall, upon application of such shareholder or shareholders, summarily order a special meeting of shareholders, to be held to elect the entire board. The term of office of any director shall terminate upon that election of a successor.

The hearing on any application filed pursuant to this subdivision shall be held on not less than 10 business days notice to the corporation. If the corporation intends to oppose the application, it shall file with the court a notice of opposition not later than five business days prior to the date set for the hearing. The application and any notice of opposition shall be supported by appropriate affidavits and the court's determination shall be made on the basis of the papers in the record; but, for good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities. The hearing shall take precedence over all other matters not of a similar nature pending on the date set for the hearing.

(d) Any director may resign effective upon giving written notice to the chairman of the board, the president, the secretary or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

SEC. 6. Section 306 of the Corporations Code is amended to read:

306. If (a) a corporation has not issued shares and all the directors resign, die, or become incompetent, or (b) a corporation's initial directors have not been named in the articles, and all the incorporators resign, die, or become incompetent prior to the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.





SEC. 7. Section 503 of the Corporations Code is amended to read:

503. Neither a corporation nor any of its subsidiaries shall make any distribution to the corporation's shareholders (Section 166) on any shares of its stock of any class or series that are junior to outstanding shares of any other class or series with respect to payment of dividends, and as to which senior class or series the corporation has cumulative dividends in arrears, unless the amount of the retained earnings of the corporation immediately prior thereto equals or exceeds the amount of the proposed distribution plus the aggregate amount of the cumulative dividends in arrears on all shares having a preference with respect to payment of dividends over the class or series to which the distribution is made; provided, however, that for the purpose of applying this section to a distribution by a corporation of cash or property in payment by the corporation in connection with the purchase of its shares, there shall be added to retained earnings all amounts that had been previously deducted therefrom with respect to obligations incurred in connection with the corporation's repurchase of its shares and reflected on the corporation's balance sheet, but not in excess of the principal of the obligations that remain unpaid immediately prior to the distribution; provided, further, that no addition to retained earnings shall occur on account of any obligation that is a distribution to the corporation's shareholders (Section 166) at the time the obligation is incurred.

SEC. 8. Section 602 of the Corporations Code is amended to read:

602. (a) Unless otherwise provided in the articles, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the shareholders, but in no event shall a quorum consist of less than one-third (or, in the case of a mutual water company, 20 percent) of the shares entitled to vote at the meeting or, except in the case of a close corporation, of more than a majority of the shares entitled to vote at the meeting. Except as provided in subdivision (b), the affirmative vote of a majority of the shares represented and voting at a duly held meeting at which a quorum is present (which shares voting affirmatively also constitute at least a majority of the required quorum) shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this division or the articles.

(b) The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute a quorum or, if required by this division or the articles, the vote of a greater number or voting by classes.

(c) In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by the vote of a majority of the shares





represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b).

SEC. 9. Section 603 of the Corporations Code is amended to read:

603. (a) Unless otherwise provided in the articles, any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing,

(1) Notice of any shareholder approval pursuant to Section 310, 317, 1201 or 2007 without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and

(2) Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent,

to those shareholders entitled to vote who have not consented in writing. Subdivision (b) of Section 601 applies to such notice.

(c) Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholders, may revoke the consent by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not do so thereafter. Such revocation is effective upon its receipt by the secretary of the corporation.

(d) Notwithstanding subdivision (a), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors; provided that the shareholders may elect a director to fill a vacancy, other than a vacancy created by removal, by the written consent of a majority of the outstanding shares entitled to vote.

SEC. 10. Section 5220 of the Corporations Code is amended to read:

5220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than three years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the



number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 5222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034), subject, if so provided in the bylaws, to the consent of the person or persons entitled to designate or select any such director or directors.

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

SEC. 11. Section 5512 of the Corporations Code is amended to read:

5512. (a) One-third of the voting power, represented in person or by proxy, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 5034). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members, unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a bylaw authorizes a corporation to conduct a meeting with a quorum of less than one-third of the voting power, then the only matters that may be voted upon at any regular meeting actually attended, in person or by proxy, by less than one-third of the voting



power are matters notice of the general nature of which was given, pursuant to the first sentence of subdivision (a) of Section 5511.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division or the articles or the bylaws, the vote of a greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (c).

SEC. 12. Section 7220 of the Corporations Code is amended to read:

7220. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. However, the terms of directors of a corporation without members may be up to six years. In the absence of any provision in the articles or bylaws, the term shall be one year. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups of one or more directors. The terms of office of the several groups and the number of directors in each group need not be uniform. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members (Section 5034).

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may provide for the election of one or more directors by the members of any class voting as a class.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw provision is duly amended or repealed, except as provided in subdivision (e) of Section 7222. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 5034).



(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

SEC. 13. Section 7512 of the Corporations Code is amended to read:

7512. (a) One-third of the voting power, represented in person or by proxy, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 5034). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a bylaw authorizes a corporation to conduct a meeting with a quorum of less than one-third of the voting power, then the only matters that may be voted upon at any regular meeting actually attended, in person or by proxy, by less than one-third of the voting power are matters notice of the general nature of which was given, pursuant to the first sentence of subdivision (a) of Section 7511.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division, or by the articles or the bylaws, the vote of the greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (c).

SEC. 14. Section 9220 of the Corporations Code is amended to read:

9220. (a) The articles or bylaws may provide for the tenure, election, selection, designation, removal, and resignation of directors.

(b) In the absence of any provision in the articles or bylaws, the term of directors shall be one year.

(c) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.



(d) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

SEC. 15. Section 9412 of the Corporations Code is amended to read:

9412. (a) One-third of the voting power, represented in person, by written ballot, or by proxy, shall constitute a quorum at a meeting of members. If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members.

(b) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division, or by the articles or the bylaws, the vote of the greater number or voting by classes.

(c) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented either in person or by proxy, but no other business may be transacted, except as provided in subdivision (b).

SEC. 16. Section 12360 of the Corporations Code is amended to read:

12360. (a) Except as provided in subdivision (d), directors shall be elected for such terms, not longer than four years, as are fixed in the articles or bylaws. In the absence of any provision in the articles or bylaws, the terms shall be one year. No amendment of the articles or bylaws may extend the term of a director beyond that for which the director was elected, nor may any bylaw provision increasing the terms of directors be adopted without approval of the members.

(b) Unless the articles or bylaws otherwise provide, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until a successor has been elected and qualified.

(c) The articles or bylaws may prescribe requirements for eligibility for election as a director.

(d) Subdivisions (a) through (c) notwithstanding, all or any portion of the directors authorized in the articles or bylaws of a corporation may hold office by virtue of designation or selection as provided by the articles or bylaws rather than by election by a member or members. Such directors shall continue in office for the term prescribed by the governing article or bylaw provision, or, if there is no term prescribed, until the governing article or bylaw



provision is duly amended or repealed, except as provided in subdivision (f) of Section 12362. A bylaw provision authorized by this subdivision may be adopted, amended, or repealed only by approval of the members (Section 12224).

(e) If a corporation has not issued memberships and (1) all the directors resign, die, or become incompetent, or (2) a corporation's initial directors have not been named in the articles and all incorporators resign, die, or become incompetent before the election of the initial directors, the superior court of any county may appoint directors of the corporation upon application by any party in interest.

SEC. 17. Section 12462 of the Corporations Code is amended to read:

12462. (a) The lesser of 250 members or members representing 5 percent of the voting power, shall constitute a quorum at a meeting of members, but, subject to subdivisions (b) and (c), a bylaw may set a different quorum. Any bylaw amendment to increase the quorum may be adopted only by approval of the members (Section 12224). If a quorum is present, the affirmative vote of the majority of the voting power represented at the meeting, entitled to vote, and voting on any matter shall be the act of the members unless the vote of a greater number or voting by classes is required by this part or the articles or bylaws.

(b) Where a corporation is authorized to conduct a meeting with a quorum of less than one-third of the voting power, then the only matters that may be voted upon at any regular meeting actually attended by less than one-third of the voting power are matters notice of the general nature of which was given, pursuant to the first sentence of subdivision (a) of Section 12461.

(c) Subject to subdivision (b), the members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the members required to constitute a quorum or, if required by this division or the articles or the bylaws, the vote of the greater number or voting by classes.

(d) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the votes represented in person, but no other business may be transacted, except as provided in subdivision (c).

SEC. 18. Section 25014.7 of the Corporations Code is amended to read:

25014.7. (a) "Eligible rollup transaction" means a rollup transaction in which the new securities issued are either listed or approved for listing on a national securities exchange or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), where the national securities exchange and



the Nasdaq Stock Market (or its successor) have been certified by the commissioner under subdivision (o) of Section 25100, if the exchange or Nasdaq Stock Market (or its successor) requires as a condition to listing or designation that the rollup transaction be conducted in accordance with procedures to protect the rights of limited partners.

(b) The rights of limited partners will be presumed to be protected if the rollup transaction provides for the right of dissenting limited partners:

(1) To receive compensation for their limited partnership units based on an appraisal of the limited partnership assets performed by an independent appraiser unaffiliated with the sponsor or general partner of the limited partnership and which value the assets as if sold in an orderly manner in a reasonable period of time, plus or minus other balance sheet items, and less the cost of sale or refinancing. Compensation to dissenting limited partners of rollup transactions may be cash, secured debt instruments, unsecured debt instruments, or freely tradeable securities; provided, however, that:

(A) Rollups which utilize debt instruments as compensation provide for a trustee and an indenture to protect the rights of the debt holders and provide a rate of interest based upon, but not less than, the then applicable federal rate as determined in accordance with Section 1274 of the Internal Revenue Code of 1986.

(B) Rollups which utilize unsecured debt instruments as compensation, in addition to the requirements of subparagraph (A) of paragraph (1), limit total leverage to 70 percent of the appraised value of the assets.

(C) All debt securities have a term no greater than seven years and provide for prepayment with 80 percent of the net proceeds of any sale or refinancing of the assets previously owned by the entity or any part thereof.

(D) Freely tradeable securities utilized as compensation to dissenting limited partners must be issued by an issuer whose securities are listed on a certified national securities exchange or listed on the National Market System of the Nasdaq Market System (or its successor), if so certified, for at least one year prior to the transaction, and the number of securities to be received in return for limited partnership interests must be determined by an appraisal of limited partnership assets, conducted in a manner consistent with paragraph (1) of subdivision (b), in relation to the average last sale price of the freely tradeable securities in the 20-day period following the transaction. If the issuer of the freely tradeable securities is affiliated with the sponsor or general partner, newly issued securities to be utilized as compensation to dissenting limited partners shall not represent more than 20 percent of the issued and outstanding shares of that class of securities after giving effect to the issuance. For the purposes of the preceding sentence, a sponsor or general partner is “affiliated” with the issuer of the freely tradeable securities if the





sponsor or general partner receives any material compensation from the issuer or its affiliates in conjunction with the rollup transaction or the purchase of the general partner's interest; provided, however, that nothing herein shall restrict the ability of a sponsor or general partner to receive any payment for its equity interests and compensation as otherwise provided by this section.

(2) To receive or retain a security with substantially the same terms and conditions as the security originally held, provided that the receipt or retention of that security is not a step in a series of subsequent transactions that directly or indirectly through acquisition or otherwise involves future combinations or reorganizations of one or more rollup participants. Securities received or retained will be considered to have the same terms and conditions as the security originally held if:

(A) There is no material adverse change to dissenting limited partners' rights, including, but not limited to, rights with respect to voting, the business plan, or the investment, distribution, management compensation and liquidation policies of the limited partnership or resulting entity.

(B) The dissenting limited partners receive the same preferences, privileges, and priorities as they had pursuant to the security originally held.

The rights set forth in paragraphs (1) and (2) are the only rights of dissenting limited partners to which the presumption under subdivision (b) applies. A general partner or sponsor shall file an application for qualification pursuant to Section 25110 or Section 25120 with respect to any other rights proposed to be offered to dissenting limited partners.

At the time a registration statement is filed with the Securities and Exchange Commission with respect to an eligible rollup transaction, a general partner or sponsor shall notify, to the maximum extent permitted by the federal securities laws, each limited partner who has an address in this state by certified mail of the following: That a registration statement has been filed with the Securities and Exchange Commission with respect to a rollup transaction; that the general partner or sponsor claims an exemption from the review process under the law by virtue of Section 25014.7, which defines "eligible rollup transaction"; that the general partner or sponsor has the burden of proof under the law that the transaction meets the definition of eligible rollup transaction; and that the commissioner does not recommend or endorse the transaction.

(c) The rights of limited partners shall be presumed not to be protected if the general partner:

(1) Converts an equity interest in the limited partnerships subject to a rollup for which consideration was not paid and which was not otherwise provided for in the limited partnership agreement and disclosed to limited partners, into a voting interest in the new entity,



provided, however, an interest originally obtained in order to comply with the provisions of Internal Revenue Service Revenue Proclamation 89-12 may be converted.

(2) Fails to follow the valuation provisions in the limited partnership agreements of the subject limited partners when valuing their limited partnership interests.

(3) Utilizes a future value of their equity interest rather than the current value of their equity interest, as determined by an appraisal conducted in a manner consistent with paragraph (1) of subdivision (b), when determining their interest in the new entity.

(d) The rights of limited partners shall be presumed not to be protected as to voting rights, if:

(1) The voting rights in the entity resulting from a rollup do not generally follow the original voting rights of the limited partnerships participating in the rollup transaction.

(2) A majority of the interest in an entity resulting from a rollup transaction may not, without concurrence by the sponsor, general partners, board of directors or trustee, depending on the form of entity, vote to:

(A) Amend the limited partnership agreement, articles of incorporation or bylaws, or indenture.

(B) Dissolve the entity.

(C) Remove management and elect new management.

(D) Approve or disapprove the sale of substantially all of the assets of the entity.

(3) The general partner or sponsor proposing a rollup is not required to provide each person whose equity interest is subject to the rollup transaction with a document which instructs the person on the proper procedure for voting against or dissenting from the rollup transaction.

(4) The general partner or sponsor does not utilize an independent third party to receive and tabulate all votes and dissents, and require that the third party make the tabulation available to the general partner and any limited partner upon request at any time during and after voting occurs.

(e) The rights of limited partners shall be presumed not to be protected as to transaction costs if:

(1) Limited partners bear an unfair portion of the transaction costs of a proposed rollup transaction that is rejected. For purposes of this provision, transaction costs are defined as the costs of printing and mailing the proxy, prospectus, or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited

partnerships in the ordinary course of business, or solicitation expenses.

(2) Transaction costs of a rejected rollup transaction are not apportioned between general and limited partners of the subject limited partnerships according to the final vote on the proposed transaction as follows:

(A) The general partner or sponsor bears all rollup transaction costs in proportion to the number of votes to reject the rollup transaction.

(B) Limited partners bear transaction costs in proportion to the number of votes to approve the rollup transaction.

(3) The dissenting limited partnership is required to pay any of the costs of the rollup transaction and the general partner or sponsor is not required to pay the rollup transaction costs on behalf of the dissenting limited partnerships in a rollup in which one or more limited partnerships determines not to approve the transaction, but where the rollup transaction is consummated with respect to one or more approving limited partnerships.

(f) The rights of limited partners shall be presumed not to be protected as to fees of general partners and sponsors, if:

(1) General partners and sponsors are not prevented from receiving both unearned management fees discounted to a present value, if those fees were not previously provided for in the limited partnership agreement and disclosed to limited partners, and new asset-based fees.

(2) Property management fees and other management fees are not appropriate, not reasonable and greater than what would be paid to third parties for performing similar services.

(3) Changes in fees which are substantial and adverse to limited partners are not approved by an independent committee according to the facts and circumstances of each transaction.

(g) A general partner or sponsor proposing a rollup transaction shall pay all solicitation expenses related to the transaction, including all preparatory work related thereto, in the event the rollup transaction is not approved. For purposes of this section, “solicitation expenses” include direct marketing expenses such as telephone calls, broker-dealer fact sheets, legal and other fees related to the solicitation, as well as direct solicitation compensation to brokers and dealers.

(h) A broker or dealer may not receive compensation for soliciting votes or tenders from limited partners in connection with a rollup transaction unless that compensation:

(1) Is payable and equal in amount regardless of whether the limited partner votes affirmatively or negatively in the proposed rollup.

(2) In the aggregate, does not exceed 2 percent of the exchange value of the newly created securities.



(3) Is paid regardless of whether the limited partners reject the proposed rollup transaction.

(i) As used in this section, the following terms have the following meanings:

(1) “Limited partnership” includes any entity determined to be a “partnership” pursuant to Section 14(h)(4)(B) of the Securities Exchange Act of 1934 or such other entity having a substantially economically equivalent form of ownership instrument.

(2) “Dissenting limited partner” means a holder or a beneficial interest in a limited partnership that is the subject of a rollup transaction who casts a vote against the rollup transaction, except that for purposes of an exchange or tender offer dissenting limited partner means any person who files a dissent from the terms of the transaction with the party responsible for tabulating the votes or tenders, to be received in connection with the transaction during the period in which the offer is outstanding.

(3) “Management fee” means a fee paid to the sponsor, general partner, their affiliates, or other persons for management and administration of the limited partnership.

SEC. 19. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.



(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to: (1) any investment contract sold or offered for sale with, or as part of, that interest, or (2) any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use that is not a public utility except that the exemption is applicable to any security of a mutual water company (other than an investment contract as described in paragraph (1)) offered or sold in connection with subdivided lands pursuant to Chapter 2 (commencing with Section 14310) of Part 7 of Division 3 of Title 1.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or its successor or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any



nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a “life income contract,” of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(l) Any note, draft, bill of exchange, or banker’s acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of that renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker’s acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees’ pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees’ pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees’ pension, profit-sharing, stock bonus or similar benefit plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), if the exchange or Nasdaq Stock Market (or its successor) has been



certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or approved for listing upon notice of issuance on a national securities exchange or on the National Market System of the Nasdaq Stock Market (or its successor), in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or the Nasdaq Stock Market (or its successor) shall be made by the commissioner upon the written request of the exchange or Nasdaq Stock Market (or its successor) if the commissioner finds that the exchange or Nasdaq Stock Market (or its successor): (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars (\$750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or Nasdaq Stock Market (or its successor) may also consider the listing of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing under this trading provision, the exchange or Nasdaq Stock Market (or its successor) shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security that trades infrequently shall not be considered for listing under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars (\$3) per share for a reasonable period of time prior to the filing of a listing application;



provided, however, in certain instances an exchange or Nasdaq Stock Market (or its successor) may favorably consider listing an issue selling for less than three dollars (\$3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars (\$3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars (\$3,000,000).

(B) (i) Shareholders' equity of at least four million dollars (\$4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars (\$15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company that (A) has shareholders' equity of less than one million dollars (\$1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars (\$3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars (\$750,000).

(v) If shares of common stock sell at a price of less than three dollars (\$3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or Nasdaq Stock Market (or its successor), certified by rule or order of the commissioner under this subdivision, shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or Nasdaq Stock Market's (or its successor) criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or Nasdaq Stock Market (or its successor) to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of



these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or Nasdaq Stock Market (or its successor) previously certified that ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or listed on the National Market System of the Nasdaq Stock Market (or its successor), named in a rule or order of certification, and any warrant or right to purchase or subscribe to that security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or the Nasdaq Stock Market (or its successor).

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, that qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may, in the commissioner's discretion, bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, a restraining order, or a writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any



person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars (\$25,000), except that costs exceeding twenty-five thousand dollars



(\$25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars (\$300). This exemption does not apply to the shares or memberships of that corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of that corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans that meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which at the time of transfer to the pool is an authorized investment for the originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars (\$25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company

incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 20. Section 25101 of the Corporations Code is amended to read:

25101. The following securities are exempt from the provisions of Section 25130:

(a) Any security issued by a person that is the issuer of any security listed on a national securities exchange, or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), if the exchange or Nasdaq Stock Market (or its successor) is certified by rule or order of the commissioner.

(b) The exemption provided by subdivision (a) does not apply to securities offered pursuant to a registration under the Securities Act of 1933 or pursuant to the exemption afforded by Regulation A under that act if the aggregate offering price of the securities offered pursuant to that exemption exceeds fifty thousand dollars (\$50,000).

SEC. 21. Section 25117 of the Corporations Code is amended to read:

25117. (a) An evidence of indebtedness, and the purchasers or holders thereof, shall be exempt from the usury provisions of Section 1 of Article XV of the California Constitution if (1) the evidence of indebtedness is rated or provisionally rated by Standard & Poor's Corporation as AAA, AA, A, BBB, or investment grade commercial paper, or by Moody's Investors Service, Inc. as Aaa, Aa, A, Baa, or investment grade commercial paper, including any such ratings with "+" or "-" designation or other variations that occur within these ratings, or has a rating or a provisional rating by another nationally recognized rating agency or system, which rating and agency or system have been certified by rule or order of the commissioner, or (2) the issuer thereof either (A) has any security listed or approved for listing upon notice of issuance on a national securities exchange or on the National Market System of the Nasdaq Stock Market (or any successor to that entity), if the exchange or Nasdaq Stock Market (or its successor) has been certified by the commissioner, pursuant to subdivision (o) of Section 25100, or (B) meets each of the following requirements:

(i) The issuer is a corporation which is subject to Section 13 of the Securities Exchange Act of 1934.

(ii) The issuer had total shareholders' equity of at least one million dollars (\$1,000,000) at the end of its most recent fiscal year, and had consolidated net income, after all charges, including taxes and



extraordinary losses, and excluding extraordinary gains, of at least five hundred thousand dollars (\$500,000) for three of its last four fiscal years, including its most recent fiscal year. The determination of total shareholders' equity and net income shall be determined in conformity with generally accepted accounting principles applicable to that fiscal year or years, on a consolidated basis, or (3) the evidence of indebtedness is issued by any corporation all of the outstanding shares of which are owned by an issuer which meets the requirements of subparagraph (A) or (B) of paragraph (2).

(b) This section creates and authorizes a class of transactions and persons pursuant to Section 1 of Article XV of the California Constitution.

(c) Any evidence of indebtedness issued in compliance with this section shall be entitled to the benefits of the usury exemption contained in this section regardless of whether subsequent to its issuance the evidence of indebtedness is determined by a court of competent jurisdiction to be a "security."

SEC. 22. Section 11521.2 of the Insurance Code is amended to read:

11521.2. (a) The reserve required by the table of commensurate values for each annuity contract issued must be invested in investments specified in Sections 1170 through 1182 except that a certificate holder may invest in securities listed and traded on the New York Stock Exchange, the American Stock Exchange or regional stock exchanges or the National Market System of the Nasdaq Stock Market or successors to such exchanges or market having the same qualifications, to the extent of the lesser of net worth (assets over liabilities and reserves) of the certificate holder or 10 percent of such general investments. This section does not permit investment in options or commodity exchanges.

(b) The certificate holder may invest in such other investments as permitted by and subject to the written consent of the commissioner.

